

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1385 of 2000

with

Civil Application No. 7039 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO LTD.

Versus

BHIMSEN PREMARAMJI VERMA F/O LATE SANJEEV BHIMSEN VERMA

Appearance:

MS LILU K BHAYA for Petitioner

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE K.M.MEHTA

Date of decision: 14/08/2000

ORAL JUDGEMENT

Appeal admitted. Learned advocate Mr. Shah waives

service on behalf of respondent Nos. 1 to 6 who are original claimants. In so far as the present appeal is concerned respondent Nos. 7 and 8 are permitted to be deleted since no relief is claimed against them. Upon joint request of the learned counsel for the parties, the appeal is taken up today for final hearing.

By this appeal under Section 173 of the Motor Vehicles Act, 1988, the appellant original opponent No. 3, National Insurance Company Limited (insurer) has questioned the validity and legality of the order recorded by the Motor Accidents Claims Tribunal (Main), District Kutch, at Bhuj, dated 5.5.2000 in MACP No. 572 of 1998 below application Exh. 6-D while exercising its power under Section 163A of the Motor Vehicles Act whereby the respondents original claimants came to be awarded an amount of Rs. 4,36,500/- with costs and interests at the rate of 12% per annum from the date of the said application till deposit, by inter alia contending that:

- (i) that the Tribunal has committed an error in not deducting 2/3rd of the amount assessed in view of the fact that the deceased was single;
- (ii) that the original application was defective as necessary parties were not joined;
- (iii) that the assessment of the dependency made by the Tribunal is erroneous.

After hearing the parties and the submissions made on behalf of the parties, the Tribunal passed the impugned order under Section 163-A by way of interim compensation to the original claimants.

We have anxiously considered the submissions made before us and the grounds stated in the memo of the appeal and the impugned order and we are of the opinion that the aforesaid contentions and other contentions that may be raised at the time of hearing of the main application under Section 166 of the M.V. Act which is pending since the impugned order is interim and it is evident that the amount awarded by way of temporary compensation is subject to the final order that may be recorded on merits in the main application made under Section 166 of the M.V. Act.

However, upon consensus the respondents original claimants shall file an undertaking before the Tribunal concerned within four weeks from today stating that they

shall pursue the main claim petition and obtain judgement and award on merits and that they shall not permit the same to be dismissed for default or they shall not withdraw it.

The appellant is directed to deposit the amount payable under the impugned order within a period of four weeks. Upon the amount being deposited, it will be open for the Tribunal to pass an order for disbursement in the light of the following directions.

- (i) 20% of the amount that may be deposited will be paid to the original claimants prorata in proportion as per the impugned order and by an account payee cheque and remaining amount of 80% shall be invested in a Nationalised / Scheduled Bank of the choice of the claimants for a period not less than five years.
- (ii) interest which shall accrue therefrom periodically shall be payable to the respective claimants prorata.
- (iii) there shall not be any encumbrance, charge or any withdrawal out of the said amount of deposits without prior approval of this court.

In view of the aforesaid observations and directions, the present appeal stands disposed of.

Since the main matter is disposed of, no orders are passed on the Civil Application.

(J.N. BHATT, J)

(K.M. MEHTA, J)

(pkn)